

OPINION OF THE JUSTICES of the Supreme Judicial Court given under the Provisions of Section 3 of Article VI of the Constitution

[NO NUMBER IN ORIGINAL]

Supreme Judicial Court of Maine

335 A.2d 904; 1975 Me. LEXIS 432

March 28, 1975, Answered

PRIOR HISTORY: [**1] Questions Propounded by the House in an Order Dated March 14, 1975.

CORE TERMS: excise tax, Committee Amendment A, real estate, Tax Law, forest land, forest, forest products, excise, forestry, property tax, classification, unconstitutionally, apportion, assess, express language, subject-matter, personal estate, current use, invidious discrimination, occupation, enjoyment, engaging, parcels, acres, Committee Amendment, economic resource, commercial activity, rational relationship, efficient administration, respectfully

JUDGES: Armand A. Dufresne, Jr., Randolph A. Weatherbee, Charles A. Pomeroy, Sidney W. Wernick, James P. Archibald, Thomas E. Delahanty.

OPINION BY: PER CURIAM

OPINION

[*905] HOUSE ORDER PROPOUNDING QUESTIONS

State of Maine

In House *March 13, 1975.*

Whereas, it appears to the House of Representatives of the 107th Legislature that the following are important questions of law and that the occasion is a solemn one; and

Whereas, it is the desire of the 107th Legislature to enact legislation to fund a Spruce Budworm Control Program for the calendar year 1975; and

Whereas, there is pending before the House of Representatives of the 107th Legislature a bill entitled "AN ACT Appropriating Funds for the State Share of the Spruce Budworm Control Program and Imposing a Tax on Forest Lands for Spruce Budworm Control," House Paper No. 560, Legislative Document No. 689, as amended by Committee Amendment "A" of the Committee on Appropriations and Financial Affairs (Filing

No. H-62), which Committee Amendment has been adopted by the House; and

Whereas, Article IX, Section 8 of the Constitution of the State of Maine requires [**2] that taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof; (except that certain specified types of real estate may be valued as to current use and in accordance with legislative conditions); and

Whereas, the constitutionality of the proposed bill as amended or in the alternative without the Committee Amendment has been questioned as it relates to that Section of the Constitution; and

[*906] Whereas, it is important that the Legislature be informed as to the answers to the important and serious legal questions hereinafter raised; now, therefore, be it

Ordered, that the Justices of the Supreme Judicial Court are hereby respectfully requested to give to the House, according to the provisions of the Constitution on its behalf, their opinion upon the following questions, to wit:

Question No. 1: Would the provisions of Legislative Document No. 689 (Exhibit A) as amended by Committee Amendment "A" (Exhibit B) an Act now pending before the House of Representatives of the 107th Legislature if enacted into law unconstitutionally apportion and assess a tax upon real estate in violation [**3] of Article IX, Section 8 of the Constitution of the State of Maine?

Question No. 2: If the answer to the first question is in the affirmative, would the provisions of Legislative Document No. 689 (Exhibit A), if enacted into law without Committee Amendment "A" (Exhibit B), unconstitutionally apportion and assess a tax upon real estate in violation of Article IX, Section 8 of the Constitution of the State of Maine?

Question No. 3: If the provisions of Legislative Document No. 689 (Exhibit A) with or without Committee Amendment "A" (Exhibit B) do not violate Article IX, Section 8 of the Constitution of the State of Maine is the

classification of persons subject to the tax in violation of the Constitution of the State of Maine?

[SEE EXHIBIT A IN ORIGINAL] [*911] ANSWERS OF THE JUSTICES

To the Honorable House of Representatives of the State of Maine:

In compliance with the provisions of *Section 3 of Article VI of the Constitution of Maine*, we, the undersigned Justices of the Supreme Judicial Court, have the honor to submit the following answers to the questions propounded on March 14, 1975.

QUESTION NO. 1: Would the provisions of Legislative Document No. 689 (Exhibit [*4] A) as amended by Committee Amendment "A" (Exhibit B) an Act now pending before the House of Representatives of the 107th Legislature if enacted into law unconstitutionally apportion and assess a tax upon real estate in violation of Article IX, Section 8 of the Constitution of the State of Maine?

ANSWER: We answer in the negative.

If enacted into law, Legislative Document No. 689, as amended by Committee Amendment "A", would not violate the provisions of *Article IX, Section 8 of the Constitution of Maine*. It imposes an excise tax rather than a property tax upon real estate; therefore, Article IX, Section 8, which prescribes limitations only as to "taxes upon real and personal estate" is inapplicable. *State v. F. H. Vahlsing, Inc.*, 147 Me. 417, 88 A.2d 144 (1952); see: *Opinion of the Justices*, 155 Me. 30, 46, 152 A.2d 81 (1959).

There is ambiguity in the legislative document under study insofar as it contains express language having both excise and property tax connotations and omits express language delineating substantive elements more suggestive of intention to impose an excise, rather than a property, tax. Concretely, although in express language the tax is labelled an "excise" [*5] tax, other language states expressly that the tax is imposed "on . . . parcels of . . . land." Further, there is a failure to specify in express terms that the tax is imposed on the

"performance of an act, the engaging in an occupation or the enjoyment of a privilege" --

these being the types of subject-matter upon which an excise tax is normally imposed. [*912] See: *State v. Western Union Telegraph Co.*, 73 Me. 518, 531 (1882); *Opinion of the Justices*, 123 Me. 573, 577, 578, 121 A. 902 (1923); *Opinion of the Justices*, 155 Me. 30, 46, 152 A.2d 81 (1959). Hence, notwithstanding the "excise" label, the textual language delineates substantive matters

indicative of a property tax on real estate rather than an excise tax on an activity, or the engaging in an occupation or the enjoyment of a privilege.

Despite these deficiencies of draftsmanship we are satisfied that Legislative Document No. 689, as amended, manifests legislative intention to impose, and may reasonably be interpreted to embody substantive provisions adequate to effectuate the imposition of, an excise tax.

The "Statement of Fact" explicitly refers to the "forests of Maine" as a "resource" important to [*6] the "economy" of the State. Throughout the proposed legislation the references to "forests" as an important "economic resource" of Maine are linked with the Tree Growth Tax Law -- 36 M.R.S.A. Chapter 105, subchapter II-A -- which defines "forest land" as

"land used primarily for growth of trees and forest products"

and excludes as "forest land" that which is "unsuitable for growing a forest type" -- i.e.,

". . . a stand of trees characterized by the predominance of one or more groups of key species which make up 75% or more of the sawlog volume of sawlog stands, or cordwood in poletimber stands, or of the number of trees in seedling and sapling stands."

In this manner, the legislative document focuses, albeit implicitly, upon the commercial activity of producing trees and forest products.¹

1 We recognize that the basic subject-matter of the Tree Growth Tax Law relates to property, rather than excise, taxation insofar as that law "implements the 1970 amendment of *Section 8 of Article IX of the Maine Constitution* providing for valuation of timberland and woodlands according to their current use"

The Tree Growth Tax Law, however, makes abundantly clear that in many of its provisions it is concerned with the "operation" of forest lands "on a sustained yield basis" and seeks to "promote better forest management" as well as the "planting, cultural and continuous growth of forest products" in relation to the "potential for annual wood production" See: 36 M.R.S.A. § 572.

Our present interest is in these aspects of the Tree Growth Tax Law highlighting that the enterprise of commercial forestry, as conducted in

Maine, is a "unique economic . . . resource" of this State.

The references in the instant legislative document to the Tree Growth Tax Law, as that law treats with forestry as a commercial venture, have the legal effect of assisting in identifying the activity of commercial forestry as the subject-matter upon which the tax, expressly designated an "excise" tax, is intended to be imposed.

[**7] Such concentration upon commercial forestry activity combined with the express identification of the tax as an "excise" tax is sufficient in our view to establish that the tax imposed is an excise tax on the commercial activity of using land for the production of trees and forest products.

That the rate of the proposed excise tax is specified by reference to land acreage does not destroy the "excise" nature of the tax. Land acreage has rational relationship to the activity on which the excise tax is imposed since, first, land as such is inextricably involved in the production of forest products, and, second, a tax-rate determination in terms of acres of land, in light of peculiarities inherent in commercial forestry, facilitates efficient administration of the tax.

QUESTION NO. 2: If the answer to the first question is in the affirmative, would the provisions of Legislative Document No. 689 (Exhibit A), if enacted into law without Committee Amendment "A" (Exhibit B), unconstitutionally apportion and assess a tax upon real estate in violation of Article IX, Section 8 of the Constitution of the State of Maine?

[*913] ANSWER: Since our answer to Question No. 1 is in the negative, [**8] the question is inapplicable.

QUESTION NO. 3: If the provisions of Legislative Document No. 689 (Exhibit A) with or without Committee Amendment "A" (Exhibit B) do not violate Article IX, Section 8 of the Constitution of the State of Maine is the

classification of persons subject to the tax in violation of the Constitution of the State of Maine?

ANSWER: We answer in the negative.

We interpret this question to be directed to whether limiting the class of persons subject to the proposed tax to owners of "parcels consisting of more than 500 acres of forest land", insofar as said land is

"subject to mandatory classification as forest land pursuant to . . . the Tree Growth Tax Law",

is an invidious discrimination contravening the "equal protection of the laws" clause of *Article I, Section 6-A of the Constitution of Maine*.

We find no such invidious discrimination. The classification bears a rational relationship to a primary purpose of the tax, achieving manageable harvesting of the spruce-fir forests as necessary for the forest industry, and, in addition, is designed to facilitate efficient administration of the tax by avoiding the gross burdens which would result if [**9] every owner of a small tract of land used primarily for the growth of trees were made subject to the tax.

Dated at Portland, Maine, this twenty-eighth day of March, 1975.

Respectfully submitted:

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